

FEB 05 2019

OFFICE OF THE CLERK

Mr. Lester Fletcher

18-8477

1902 Rochell Ave #1726 District Heights, Maryland 20747

IN THE SUPREME COURT OF THE UNITED STATES

Case: 17-1732 FROM THE UNITED STATES FOURTH CIRCUIT COURT OF
APPEALS

Mr. Lester Fletcher

Petitioner,

v.

Ashton B. Carter

Respondents.

On Petition for Writ of Certiorari to The United States Supreme Court Washington
DC PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,



To The Clerk's Office: The Supreme Court of the United States,

Washington District of Columbia 20543

I

QUESTIONS PRESENTED

In 1888 Decision in Ames v. Kanas, in which the Court ruled that parties embraced by the Supreme Court's original jurisdiction could bring suit in any court with jurisdiction over the parties or Subject Matter.

Question: So in cases like EEOC v. United Airlines, when that case was sent back to the District Court or EEOC by the Supreme Court's ruling over Disability Accommodation Discrimination, "Subject Matter Jurisdiction" was granted and is granted with similar cases?

II

PARTIES TO THE PROCEEDINGS

10 U.S. Code § 113 - Secretary of Defense 5. RESPONSIBILITIES AND
FUNCTIONS Secretary of Defense or the Deputy Secretary of Defense; Patrick M.
Shanahan Acting Secretary of Defense et al.), Department of Defense, DeCA
Commissary

III

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APPENDIX B: See ECF 39 Returned Plead letter to Lester D. Fletcher (Attachments: # 1 1 st page of returned document)(ah4s, Deputy Clerk) (Entered: 03/24/2017)

APPENDIX C: App. 9 OPINION/ORDER DIRECTING LIMITED REMAND [4CCA retains jurisdiction]. Originating case number: 8:15-cv-03897-PX Copies to all parties and the district court/agency. Mailed to: Jane Anderson and Lester Fletcher. [1000185307] [17-1732] RE [Entered: 11/02/2017 07:41 AM] In The United States Court of Appeals for the Fourth Circuit Before NIEMEYER, SHEDD, and THACKER, Circuit Judges. **APPENDIX D:** See ECF 45 UNPUBLISHED OPINION/ORDER of USCA ordering a limited remand to the USDC to promptly docket Lester Fletcher's response as a Rule 59(e) motion and to consider the motion on its merits. Regardless of the outcome of the Rule 59(e) motion, the record, as supplemented, will be returned to this court for further consideration. In ordering this limited remand, we express no opinion as to the merits of the motion. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process, re: 41 Notice of Appeal, filed by Lester D. Fletcher. (krc, Deputy Clerk) (Entered: 11/03/2017)

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APPENDIX F: See ECF 49 ORDER denying 47 Motion for Reconsideration; directing clerk to return this case to the US Court of Appeals for the Fourth Circuit; directing clerk to close this case. “s/” by Judge Paula Xinis on 3/29/2018. (c/m 3/30/2018 aos, Deputy Clerk) (Entered: 03/30/2018)

APPENDIX G: App. 17 JUDGMENT ORDER, UNPUBLISHED PER CURIAM
OPINION filed. Decision: Affirmed in part and affirmed as modified in part.
Originating case number: 8:15-cv-03897-PX. Entered on Docket Date: 11/07/2018.
[1000399716] Copies to all parties and the district court. Mailed to: Lester D. Fletcher. [17-1732] JR [Entered: 11/07/2018 08:43 AM] In The United States Court of Appeals for the Fourth Circuit Before NIEMEYER, SHEDD, and THACKER, Circuit Judges.

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Opinions Below

See ECF 53: The Opinions of The United States District Court and The United States Courts of Appeals for The Fourth Circuit can be found at (Deputy CLERK Fed. R. App. P. 41.) The Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

The MEMORANDUM OPINION of District Judge “s/” by Judge Paula Xinis is attached as Appendix A. The Returned Plead letter to Lester D. Fletcher, denying his reasoning for tolling is attached as Appendix B. The OPINION/ORDER DIRECTING LIMITED REMAND [4CCA retains jurisdiction] for the Fourth Circuit Before NIEMEYER, SHEDD, and THACKER, Circuit Judges is attached as Appendix C. The UNPUBLISHED OPINION/ORDER of USCA ordering a limited remand to the USDC to promptly docket Lester Fletcher's response as a Rule 59 on Mr. Lester Fletcher appeal is attached as Appendix D. The ORDER Reopening Case; directing clerk to docket the response as a motion to alter or amend the Judgment “s/” by Judge Paula Xinis is attached as Appendix E. The ORDER denying 47 Motion for Reconsideration; directing clerk to return this case to the US Court of Appeals for the Fourth Circuit; directing clerk to close this case. “s/” by Judge Paula Xinis are attached as Appendix F. The JUDGMENT ORDER, UNPUBLISHED PER CURIAM OPINION Decision in The United States Court of Appeals for the Fourth Circuit Before NIEMEYER, SHEDD, and THACKER, Circuit Judges are attached as Appendix G.

Jurisdiction

INVOKED UNDER: COURTS OF APPEALS; CERTIORARI; CERTIFIED QUESTIONS. CASES IN THE COURTS OF APPEALS MAY BE REVIEWED BY THE SUPREME COURT BY THE FOLLOWING METHODS:

(1) By Writ Of Certiorari granted upon The Petition of any Party to any Civil or Criminal Case, Before or after Rendition of Judgment or Decree; The United States Courts of Appeals for The Fourth Circuit Entered Its Decision on November 7, 2018. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Statement of Case

The Petitioner was hired as a (GS4) General Schedule Store Associate Worker for The Work Force of The Future Training Program, located at Andrews Air Force Base, The Defense Commissary Agency in Prince George County Maryland; From September 27, 2007. Later he was Involuntary Discharged (fired) on June 7, 2011. The Petitioner was paid under The General Schedule **at the highest Grade in The Work Force of The Future Training**, for The General Schedule Federal Workers to achieve a Grade 4; As a Store Associate Worker. See ECF 18 #3 Exhibit 2 at pages 190-193 Grocery Store Manager Mr. Cakes testimony. See ECF 1 #3 attachment 1 Judge Affidavit.

See ECF No. 18-2 At 72: In August Of 2008 improperly reassigned and improperly trained through February 23,2010 because his training was not documented on his SF-50, in which is by **LAW in violation of Section 2302 (b)(8) and (b)(9)**. The Petitioner was selected to work and train in a Detailed Position inside The Meat Department of The Commissary that hired him. By then, Store Director Tony Andre. The Meat Department is under a different Pay Scale (Wage Grade Pay): The Meat Department Workers that trained The Petitioner were mostly Wage Grade 5 Workers, but Wage Grade 7 Workers trained The Petitioner as well. The Petitioner Co-Workers were paid under The Wage Grade Pay Scale; The Petitioner wasn't. See ECF No. 18-2 At 67.

January 2009 The Petitioner was due to return to work in January 2009 (from two car accidents that happen in October AND December of 2008) BUT was denied accommodation for "Light Duties" that his Primary Care Doctor AND Total Health Family Clinic "Physical Health Medicine Rehabilitation Center" placed him on with letters addressing his disabilities. See ECF 30 #3 Exhibit 4 at 7,11 of 111 pages.

The Petitioner contacted EEO's Claudie Grant that Mrs. Dial denied him accommodation to return to work, but the Petitioner didn't follow through EEO at that time. See ECF 18 #3 Exhibit 2 at 230 Lines 8-13 also at 278 Lines 20-12 and at 279 1-5 Mrs. Dial testified that Claudie Grant contacted her in January of 2009. Mrs. Dial reprisal against the Petitioner ever since he filed a complaint with EEO. Protected Class a group of People with Disabilities. Title VII of Civil Rights Act Of 1964.¹

May 5, 2009 the Petitioner sent in a Doctor's Letter from his Doctor. Explaining that The Petitioner Lester Fletcher MUST be placed on "Light Duty". Due to his "Two Car Accidents" in the year ending 2008. On May 5, 2009 after reviewing The Petitioner's faxed Doctor's Letter, to his job. The Petitioner Manager from The Meat Department Mr. Larry Hill filed a complaint with Management, saying that there is no Light Duty in The Meat Department. Adding that The Petitioner should be Terminated (See ECF 16 The Petitioner's Amended Complaint Dated 6/30/2016) The Petitioner Doctor's Light Duty Letter was NOT accepted by Management or Mrs. Dial. **See ECF 30 #3 Exhibit 4 at 17 AND 18 pages of 111**

²See ECF No. 16 At 6; In addition to MAY 2009 the Petitioner also made The

¹ The record also inconsistently provides that the complainant first initiated contact with an EEO Counselor on March 1, 2010. ECF No. 18-2 at 24. and March 3, 2010. ECF No. 18-2 at 8. The Court applied January 13, 2010 date. (January 13, 2010 was for reprisal, it should be January 9, 2009 for refusing to accommodate. **See ECF 18 #3 Exhibit 2 at 13-page lines 1-8 page 30 lines 14-15**) If I may, in addition the Petitioner contacted EEO in July 23, 2009 as well and filed a formal complaint April 15, 2010.

² In 2008, Congress expanded the definition of "disability" under the ADA to make clear that "physical or mental impairment[s] that substantially limi[t]" an individual's ability to lift, stand, or bend are ADA-covered disabilities. ADA Amendments Act of 2008, 122 Stat. 3555, codified at 42 U. S. C. §§12102(1)-(2). As interpreted by the EEOC, the new statutory definition requires employers to accommodate employees whose

Agency aware, that his Doctors orders were that The Petitioner wasn't to be under any Stress because Stress is Extremely Critical to The Petitioner's Chronic and Acute Infirmities. See ECF 25 (c/m 11/23/2016 aos, Deputy Clerk) (Entered: 11/23/2016) Petitioner's Protective Order Dated November 23, 2016 BY JUDGE PX-15-3897 "/SI" See **ECF 16 At 8: June 10, 2009** The Petitioner returned to work after being told he would be fired if he didn't come back to his regular Assigned Duties in The Meat Department. The Petitioner brought another Doctor Letter with him when he returned to work on **June 10, 2009**. Underscoring that The Petitioner was still recovering from the Two Car Accidents and was being Rehabilitated by a Chiropractor. See **ECF 22 #1** In the Petitioner's Amended Motion (Exhibits to Response Filed Separately on Shelf9cags, Deputy Clerk) Modified on 10/25/2016 (aos, Deputy Clerk). (Entered: 10/24/2016). (See **ECF 30 #3 Exhibit 4 at 7,8,11-14, 22. The Petitioner's Amended Complaint-Letters & Disability Certificates Undisputed**) The Petitioner continue to experience pain when he went back to work, his condition was presented again to his workplace, of his Disability.

July 10, 2009 The Petitioner brought another **Disability Certificate** from his **Dr. Ashkan Aazami, DC, Total Health Family Clinic, Inc.** Stating: Mr. Fletcher received treatment from this location for injuries sustained on 12/19/2008. Noting: The Patient is still subjected to Recurrent Flare-Ups' of his lower back, and right-hand Symptomatology brought on by Various Activities he performs in The Meat Department at AAFB Commissary. Stating therefor Mr. Fletcher has been advised to remain on Light Duty & avoid prolonged & sustained bending, lifting & moving of Heavy Machinery Etc... The Petitioner wasn't removed from The Meat Department until **February 23, 2010**. (See **ECF 30 #3 Exhibit 4 at 57 of 111**

temporary lifting restrictions originate off the job. See 29 CFR pt. 1630, App., §1630.2(j)(1)(ix). We express no view on these statutory and regulatory changes.

pages. The Petitioner is suffering from Fibromyalgia to this day.

On July 22, 2009 The Petitioner brought Another Medical Certificate Eugene Taylor MD, Greater Baden Medical Service, in **Dated July 7, 2009** (Who Is No Longer the Petitioner's Doctor) Stating: Two of The Petitioner's Medical Conditions require adjustment at his place of employment." The First Condition is Chronic and Sever Alopecia that he would benefit keeping his head covered. The second Diagnosis is Mr. Fletcher has Osteoarthritis in his back, secondary to his motor vehicle accidents. Explaining that The Petitioner is in Therapy to evaluate and treat his Chronic Back, Neck and Arm Pain. That he would benefit from NOT working in a cold environment that will exacerbate his Arthritis. **(See ECF 30 #3 Exhibit 4 at 26 of 111 pages. See AND ECF No. 16:3: On July 7, 2009.** A (CAO) Vacancy Position became opened for (Computer Assistance Ordering Clerk) inside The Agency's Commissary. The Petitioner former employer opened this position AND closed it **on August 3, 2009, See ECF 18 #2 at 170-177.** The Petitioner applied for the (CAO) Position BUT was told, that he didn't make the best qualified list. However, 3 females were given the (CAO) position ***Earlene Register, Victoria Williams and Paula Smith*** that was open to be COMPETENT for one Worker. **See ECF 18 #2 at 233 lines 8-21 through 239 lines 3-8.** These three women was also placed on a 1-year Full-time Schedule NOT to exceed a 1 year, the same privileges a year prior, reminding you the position was for one worker. The Petitioner was denied a Promotion to CAO unlike his co-workers ***Earlene Register and Victoria Williams** was Promoted to CAO by Mrs. Dial AND without going through the "Workforce of The Future Training". The Petitioner now believes that he was Discriminated because of his Disability, in addition to his Sex AND EEO Activity. Ms. Dial promoted these female workers, her favorites. Also, the Petitioner wasn't accommodated to the Vacant Computer Assistant Ordering Department (CAO), from the Meat Department as his Disability Letter requested. The Petitioner's CAO Skills and Experience are ANNOTATED on His SF-50 in

2008. See ECF 30 at #3 Exhibit 4 at 24,26 of 111 pages. The Petitioner's Doctor requested him to be removed from the Cold. In Addition, the Petitioner was hired a GS-4 and a part of his assigned duties were to work in CAO, he didn't have to qualify at all. See ECF 30 #3 Exhibit 4 at 40, 66/ 66-70 of 111 pages. Also See ECF 18 #3 Exhibit 2 at 281-282 Mrs. Dial testified that she didn't consider the Petitioner because he had no training in the Computer Assistance Ordering Department (CAO).

Note: Earlene Register, Victoria Williams and Paula Smith are not in the same Protective class (es) of the Petitioner who is a Man and he's in a Disability Protected Class. Protected also under EEO Rights³ these women were promoted and accommodated in the vacant CAO position. Had the Petitioner been a female and had no EEO or EEOC Charges against Mrs. Dial or the Respondent, he would had been promoted, rather the Petitioner was reprisal against because of such.

ECF 30 #1 Exhibit 2 at 14 The Petitioner requested to be moved the salvage department to accommodate his disabilities but was rejected. (See ECF 16 #1 and #2 The Petitioner's Amended Complaint Dated 6/30/2016 Doctor's

³ I would hold, in line with The Second and Third Circuits, that an employee has the burden of showing that a vacancy existed at the time a transfer was (needed). See Jackan v. New York State Dept. of Labor, 205 F.3d 562, 567 (2d Cir. 2000), Shapiro v. Township of Lakewood, 292 F.3d 356 (3d Cir. 2002). Considering the evidence presented and similar situations as CRABILL v. CHARLOTTE MECKLENBURG BOARD OF EDUCATION. The Petitioner is entitled to Equitable Tolling. The Petitioner is also in a Protected Group Male under Title VII of the Civil Rights Act of 1964 not to be Discriminated against his Sex in hiring or promotion or disability. These women were not in any EEO Activity against the Respondents at any time the Petitioner was.

Letters & Disability Certificates AND Grievances⁴.

Furthermore, the Petitioner Grievances Date **July 22, 2009** emphasizes that he even asked to be reassigned from The Meat Department to The Salvage Department to Accommodate his Disabilities from the cold in The Meat Department, the accommodation was denied. The Salvage Department is inside the hallway of The Grocery Store to markdown damaged can goods and Grocery Store Products, (The Petitioner was trained in this area of The Commissary upon request); which is a 100 time warmer than The Meat Department. The Petitioner's request was NOT met with Mrs. Dial. The Petitioner gave his grievances to Mr. Hill & Mr. Anderson then Mrs. Dial called The Petitioner to her office over the Store Intercom (**See ECF 18 #3 Exhibit 2 at 269 Lines 9-13**) & told him that there is no Light Duty here, that she removed it when she became Store Director. AND that she was going to go by the letter Dated **June 2009** that the Petitioner could return to full duty; Or that The Petitioner could go home. (**See ECF 30 #3 Exhibit 4 at 49 Undisputed SEE ECF 30 #1 Exhibit 2 at 17-18** That said, this was after The Petitioner Reported GROSS Misconduct; in his grievances **July 22, 2009**, under Mrs. Dial's administration of The Agency's Commissary, about meat falling on The Meat Department's bloody dirty floor. That, that meat was still processed and wrapped for sell; during The Petitioner training in The Meat Department. The Petitioner reported it twice to ⁵The Inspector General's Office, they did NOTHING. It is NOT

⁵ In addition to the **Grievances** reports, The Petitioner wrote up and reported to the Inspector General against The Agency, for Fraud Abuse AND Waste: In the Meat Department. The Petitioner was told that he will be protected under Whistleblower Laws from retaliation, even though he gave his name (Mr. Lester Fletcher) in these Whistleblower reports to the Inspector General. **In which by LAW the Petitioner was supposed to be PROTECTED under Reprisal AND Whistleblowing Protection 5 U.S.C. 1214 (a)(3) and 1221.**

the Petitioner's signature on the receiving end of The Petitioner's Grievances, It's also The Store Manger Leon Anderson. See ECF 30 #1 Exhibit 2 At 4-6, 10-11, 14-16. **Mr. Anderson the Store Manager Received the Petitioners Grievances.** The Petitioner wasn't removed from the Meat Department like his Doctors ordered him to be, until February 23, 2010. The Petitioner **SUFFERED** injuries to his body because of that, during that time of July 7th, 2009 to February 23rd, 2010 he was left in the cold in climate. See ECF 18 #3 Exhibit 2 at 267 Lines 4-7 Mrs. Dial testified that the Petitioner have been in the Meat Department for several months. The Petitioner was improperly reassigned again to the Front-End on short notice February 26th, 2010, the Petitioner worked the cash register a position he already trained until he took seriously ill in November 2010; the Petitioner was still suffering from his disabilities.

In November of 2010 See also ECF 30 #3 Exhibit 4 at 106-107 The Petitioner Job Emails Mrs. Davis Harassed the Petitioner to return to work after him being hospitalized, he was hospitalized for Pneumonia and a High Fever **See ECF 30 #3 Exhibit 4 Seal Documentations**, at this time The Petitioner was still employed with The Department of Defense Commissary Agency under The Respondent. **In January of 2011**, The Petitioner's front-end Supervisor Mrs. Davis denied The Petitioner's Disability Family Medical Leave, she wanted the name of the Petitioner's illness, the Medical Disability Duration letters from the Petitioner's Doctor for July 9th, 2010 to July 9th, 2011 wasn't enough for her, but by law they were adequate, so the Petitioner didn't have to go into great depths of his illness. In 2012 The Petitioner suffered MORE with his infirmities (illnesses), He was Hospitalized twice again for Acute Bronchitis, The Petitioner's health was fading. He was having shortness of breath Approximately April 2012 and again in June of 2012 from Pneumonia and High Fever again. In 2013 The Petitioner became

Legally Disabled from The Hospitalizations: Initiated from the November 2010 Hospitalization from the work-related Stress the Petitioner Suffered with The Respondent,

Also See ECF 30 #3 Exhibit 4 at 27,28 of 111 pages at the top of the documents. The Petitioner submitted Documentation on his medical condition July 9, 2010 AND again on August 7, 2010 the Medical documentation was filled out by his primary care Doctor at the time Eugene Taylor; Notice on the Medical Form in which the Petition submitted to his employers covers the Petitioner from July 9, 2010 to July 9, 2011. See ECF 30 #3 Exhibit 4 at 27 of pages 111. This Documentation also states that the Petitioner is unable to Work⁶. See also ECF 30 #3 Exhibit 4 at 109 The Petitioners Reinstating his Family Leave to carrying him out through July 9th, 2011 that Mrs. Davis refused to sign. Rita Harris, the Leave Donor Specialist Said all she needed was a signature and that the documentation was still acceptable. See also ECF 30 #3 Exhibit 4 at 24, 29, 44, 37-48 The Petitioners Performance Appraisal show on page 44 that he was out on Medical Leave in the Leave Donors program before. Be remindful that the Performance Appraisal are Graded a year in advance. Note: that July 9th, 2010 was a year AFTER the CAO Position was posted for the (CAO Position July 7th, 2009 and closed August 3rd, 2009, when the Petitioner wasn't accommodated for his car accidents, AND left in the cold Meat Department.) The Petitioner was harassed to come back to work after he was discharged from the hospital November 5th, 2010 the Petitioner shortly

⁶ In Cleveland v. Policy Management Systems Corp., the Supreme Court agrees with EEOC's position that a plaintiff can go forward with his or her Americans with Disabilities Act case despite having filed an earlier claim for disability under the Social Security Act alleging he or she is unable to work.

returned to work after November 13th, 2010 and later took ill again. His last day physically working at the Commissary was November 23, 2010.

On October 12-13, 2011 There were EEOC Hearings Before Judge Modu regarding the Petitioner's Discrimination case. Prior to this timing the Petitioner was reprisal against on **June 7, 2011** the Petitioner was involuntary discharged. See ECF 30 #3 Exhibit 4 at 76, 77 of 111 pages at the top of the documents. (Mr. Willie E. Yarbrough- Assistant Commissary Officer) intentionally involuntarily discharged the Petitioner.) The Petitioner also argued The Wrongful Termination reprisal in his EEOC Appeal In 2013. **After the EEOC Hearing in 2011 The Petitioner Appealed his case with EEOC June 6, 2013.** In Violation of Title VII of the Civil Rights Acts Of 1964 (Title VII) as Amended, 42 U.S.C. 2000e seq. The Commission accepted the Appeal pursuant to 29 C.F.R. 1614.405(a). Mrs. Dial testified that she allowed older workers in their 60's and 70's to be excused from training and "Heavier Lifting" (Light Duty) and Disability

⁷See ECF 18 #3 Exhibit 2 at 249 19-21 AND 250 1-6; and at 271. Mrs. Dial also testified that everyone had to sign that they were WILLING to work in every department and be able perform the duties. But she excluded people in their 60's and 70's. These people are older than the Petitioner that was compelled to complete his training and wasn't officially and or adequately accommodated from the Meat Department. See ECF 18 #3 Exhibit 2 at (*269) 270-271 Mrs. Dial testified that she allowed a woman "Light Duty" because she brought in a Doctor's Letter. The Petitioner brought in

⁷ In Gross v. FBL Financial Services, Inc., 557 U.S. 167 (2009), the Supreme Court holds that plaintiffs must always show that age was the "but for" cause of discrimination to establish ADEA liability.

several "Doctor Letters" and was Intentionally Discriminated by reprisal and denied accommodation, even with The Petitioner's Chiropractors Prescribing him to wear a Hand brace because of tendonitis from the car accidents. See ECF 18 # Exhibit 2 At 122 Lines 1-14. The Meat Department Supervisor Beevenell Robinson testified that the Petitioner was wearing a hand brace and lifting HEAVY Boxes in the Meat Department when he returned to work in the Meat Department from his two car accidents.

Because of the Petitioner's engagement in EEO activities against Mrs. Dial, these were some of the reprisals he suffered, none of the Petitioner's former Co-Workers listed in His Complaint had EEO Or EEOC activity against Mrs. Dial at the time of His Complaint to EEO or EEOC. Mrs. Dials actions towards the Petitioner were INTENTIONAL. "The Meat Department Supervisor Mrs. Robinson had just started at the Commissary when I returned to work AND She had put me on light duty that day because of my hand brace BUT Mrs. Dial took Me off two hours later, the same day. I was told by Mrs. Dial to be returned to FULL Duty." SEE ECF 30 #1 Exhibit 2 GRIEVANCES at 17-18. With that said, The Petitioner's 3 Years Statue for filing Wrongful Termination, Age and Disability Discrimination Claim had NOT expired, from January 6, 2013 to December 21, 2015, the Petitioner still had 5 months and 15 days to add the Maryland Tort Claim to his Federal Court's Complaint. January 6, 2013 to December 22, 2015 is Two years, Six Months And 16 days. The Petitioner enters in Maryland Tort Claim Law Md. Code Ann. Cts. & Jud. Proc. § 5-101 and Maryland Courts and Judicial Proceedings Article 3 Years Limitation in general. Maryland Courts and Judicial Proceedings Section 6-101. The Petitioner is filing under personal injury and intentional wrongdoing. 28 U.S. Code § 2401 - Time for commencing action against United States Except as Provided by Chapter 71 Of Title 41, Every Civil Action Commenced Against the United States shall be barred unless the Complaint is filed within six years after The Right of Action First Accrues. Under Legal Disability or beyond the seas at the time The

Claim Accrues may be commenced within Three Years after The Disability Ceases.

In the District Court of Greenbelt Maryland, The Judge Finale Decision on March 6, 2017 Reads: On December 22, 2015. Ninety-six days after the mailing of the decision. Plaintiff commenced the instant action? ECF No. I ⁸. Plaintiff filed an Amended Complaint on June 30, 2016. see ECF No. 16. Liberally construed. Plaintiff Amended Complaint asserts claims under Title VII of the Civil Rights Act of 1964 ("Title V II) as amended. 42 U.S.C. 2000e et seq. (ECF No. 16 at I r, the Americans with Disabilities Act of 1990 ("ADA"). 42; S.C.A. 12101 et. seq. (ECF No. 16 at l): and the Rehabilitation Act of 1973. 29 U.S.C.A. 701-797 (ECT No. 16 at l): and the Age Discrimination in Employment Act ("A DEA"). 29 l}. S.C. 62 1 et seq. (ECF No. 16 at 4). Plaintiff alleges that the Agency failed to provide him with a reasonable accommodation for his panic attacks and depression. and illegally terminated him because he took medical leave. Plaintiff also contends that his employer discriminated against him when two female employees were selected for full-time positions instead him. Lastly, - Plaintiff asserts throughout his employment that he was subject to a hostile work environment. ——— **Page 9** Claims in a judicial complaint then can be advanced in this Court "here they are "reasonably related" to the EEOC charge and "can be expected to follow from a reasonable administrative investigation."- Sydnor v. Fairfax City. Va. 681 F.3d 591. 594 (4th Cir. 2012). see also McCray v. Maryland Dep't of Transportation. 662 F.

⁸ Plaintiff's Complaint is dated December 21, 2015. but the Filing date stamp noting when the Clerk received the Complaint. is December 22, 2015. See "Wells v. Apfel. 103 F. Supp. 2d 893, 897 (W.D. Va. 2000) (complaint was "filed" on the date which it was first received by the clerk's office): cl.' Pledger v Fairfax City. No. 3: 13-CV-740-JAG. 2014 WL 2040068. At *2 Va. May 16, 2014). atf d suh nom.

App. x 221, 223 (4th Cir. 2016); Jones v. South peak Interactive (corp. of Del. 777 F.3d 658, 669 (4th Cir. 2015). "The touchstone for exhaustion is whether plaintiff's administrative and judicial claims are reasonably related.

Administrative Proceeding See ECF #18-3 at 6. The decisions of the EEOC Administrative (ECF #18-4 at 8) Law Judge and OFO (ECF #18-5 at 3) confirms that the Petitioner Discrimination case are in these orders of EEOC charges: Sex (Gender) Discrimination and EEO reprisal for engaging in EEO activity. 1. Denied Promotion to Full-Time Assignments during August 2009 2. Pay Scale not equal to the wage grade work he did in the Meat Department with his co-workers. 3. Improper reassignments in his job duties. 4. His unacceptable training in the Commissary training program 5. Change in Work Schedule without proper notice. The Petitioner's Non-Selection (CAO Promotion) Computer Assistant Ordering Clerk: *The Respondent raised questions about the Petitioner's claim of Non- Selected CAO position was untimely.* On the MERIT the Federal Judge Followed suite with the District Court Of South Carolina in Ester Suit for untimely filing a (Non-selected position): ⁹Johnson v. Vilsack, No. CA 3: 0-3254-MBS-SV11, 2013 13 1 6494. at (D.S.C. Mar. 28, 2013). Because the EEOC Administrative Judge and OFO accepted and ruled on the Petitioner's claim without arguing on timelines. See **Administrative Proceedings and Decisions. The District Court Judge Noted: "In the Ninth Circuit Court of Appeals confirms that an agency only waives its timeliness defense if the decision is on the merits and the agency finds**

⁹ These are some of the Several courts and or appeals have since followed the Ester case or cited it with acceptance. U.S. Dept of Justice, 314 F.3d 71, 74-75 Kurt: v. McHugh, 423 F. App. x 572, 582 (6th Cir. 201 1); and Hall v. Dept. Treasury, 264 F.3d 1050, 1061 (Fed. Cir. 2001), and (2d Cir. 2002) See Mercado v. Ritz- Carlton San. Juan, 410 F.3d 41, 45 Cir. 2005:

discrimination. *Boyd v. U.S. Postal Serv.* 752 F.2d 410, 414 (9th Cir. 1985) ("The mere receipt and investigation of a complaint does not waive objection to a complaints Failure to comply with the original filing time limit when the later investigation does not result in an administrative finding or discrimination.").

The Respondent waived its defense in the Petitioner's argument of Sex Base Discrimination, Promotion and Reprisal se 15-cv-0897. However, the Federal Judge in this case dismissed the Petitioner's case entirely because he was found a day late filing his complaint in Federal Court. In addition to a Federal Question on the Petitioner's New Claims of Disability and Age Discrimination was presented in her the Federal Court process, on Jurisdiction Subject Matter. The Judge states also in her findings on March 6, 2017 that the Petitioner didn't exhaust all his administrative remedies. ECF 17-1732 App. 7 The Petitioner appealed the Federal Judge Decision in the Fourth Circuit Court of Appeals on July 7, 2017 in a Supplemental Informal Opening Brief. ECF 17-1732 App. 9 See on November 02, 2018 the Fourth Circuit Courts of Appeals Ruled in the Petitioner's Favour and order the Federal District Court to Reopen the Petitioner's case on LIMITED REMAND [4CCA retains jurisdiction]. Originating case number: 8:15-cv-03896-PX Copies mailed to all parties and District Court/ Agency. Mailed to: Jane Andersen and Lester Fletcher. [1000185307] [17-1732] RE [Entered: 11/02/2017 07:41 AM] The Federal Judge Then Reopened the Case on December 19, 2017 MOTION to Alter? Amend 37 Order Granting 18 Motion to Dismiss for failure to state a Claim; granting 18 Motion for Summary Judgement; denying 33 Motion to Strike by Mr. Fletcher. Then the Federal Judge Denied the Reconsideration on April 04, 2018.

The Petitioner Appealed again with The Fourth Circuit Court of Appeal and that Court decided on November 7, 2018 that the Federal Court Dismissed Fletcher Age Discrimination and Disability Case for lack of Subject Matter Jurisdiction without

prejudice; the Fourth Circuit Court Appeals affirmed that portion of the dismissal order as modified to reflect that the dismissal is without prejudice. See S. Walk at Broadlands Homeowner's Assn v. Open Band at Broadlands, LLC, 713 F.3d 175, 185 (4th Cir. 2013) ("A dismissal for . . . [a] defect in subject matter jurisdiction[] must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.").

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process. AFFIRMED IN PART, AFFIRMED AS MODIFIED IN PART.

However, the Petitioner has brought several Disability Doctor notes for him to be accommodated ¹⁰by his former employer at the Commissary Department of Defense under the Respondent. These administrative procedures were exhausted in his EEO attempt. During the EEOC Hearing, the District Court Amended Complaint and the US Appeals Court Fourth Circuit. The Petitioner argument for accommodated cannot go unnoticed without his disability letters that were rejected by the Respondents; the Petitioner's Doctors letter directed the Respondent to accommodate him during his employment. The Petitioner had three years to file Maryland Tort Claim,¹¹ the Petitioner Discovery was still in MOTION after his 90 days limitation period and Amended in his Amendments complaint filed in Federal Court, discovering after his EEOC appeal on June 6, 2013 that he was also Discriminated by his disability conjunction with his accommodation requests and Light Duty.

¹⁰ See Disability Letters Id ECF 30 #3 Exhibit 4 pages 1-111 it's also in imperative to receive pages 3 through 8 of these documents in its presentation because these are the Disability accommodation requests made by the Petitioner, that were rejected by the Respondent.

¹¹ 14th Amendment "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

Rule 15c (1) An Amendment to pleading relates back to the date of the Original pleading when B. applies that if an EEOC Claim is reasonably related; Amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – attempted to be set out in the original pleading. In the Petitioner's case prior to the Federal Judge or and the Fourth Circuit Court of Appeals. The EEOC

Reasons for Granting the Petition

Administrative Law Judge has made it clear in her findings of Discrimination based on Sex, Reprisal for EEO Activity, Promotion, and that the Petitioner was Improperly reassigned to other Departments in the Commissary. The Petitioner has since Discovered that in his training in the Meat Department of the Commissary that he was improperly reassigned and denied reasonable accommodation by the Respondent due to reprisal, also by rejecting the Petitioner's Disabilities Doctor Letters and denying him Promotion to the next grade. In Which the Petitioner could had been accommodated by being moved to the Vacant CAO Position for Computer Ordering Assistant Clerk or any other location in the Commissary. In addition, the Petitioner Disability Letter should had been accepted without him discussing any other disability he has, that are protected by Law. ¹²

¹² The Americans With Disabilities Act (ADA) protects employees with disabilities from being harassed, fired, or from other employment decisions based on disabilities that are covered under the act, such as HIV. The EEOC filed suit in U.S. District Court for the Eastern District of North Carolina, Western Division (*U.S. Equal Employment Opportunity Commission v. Butterball, LLC*, Civil Action No. 5:11-cv-00685) after first attempting to reach a pre-litigation settlement through its conciliation process. The EEOC seeks monetary damages for Montgomery as well as certain injunctive relief.

¹² *Bragdon v. Abbott* (1998) The Court holds that HIV infection qualifies as a disability under the Americans with Disabilities Act ACT(ADA).

Petitioner Amended his claim See ECF 30 in The District Court. The Petitioner didn't discover evidence of his "Reprisal Employment Termination" for participating in EEOC Activity until approximately August 08, 2012 from his Unemployment Case with State of Maryland DLLR Department of Labor, Licensing AND Regulations: Board of Appeals Stating That the Petitioner was Wrongful Terminated¹³ AND entitled to his unemployment benefits he claimed. See ECF 1 #4 Attachment 2 at 1-4. The Petitioner Appealed EEOC case from June 6th, 2013 to December 22, 2015 is 2 Years, 6 Months AND 17 Days from December 21, 2015. Court case underscored The Agency had taking The Petitioner's unemployment benefits (Because the Agency Said the Petitioner act with Gross Misconduct of Absences). Stating: The unemployment Judge found that The Petitioner's health condition was accurate with his Doctor's Periodic Incapacitated Disabilities Certificates he used as evidence; citing that the Petitioner wasn't terminated because of Gross Misconduct of Absences rather that The Petitioner was Involuntary Discharged because of his health condition (Disability) which is beyond his control. The Judge awarded The Petitioner his back pay of Unemployment Benefits and to continue his Unemployment payment in 2011. The Petitioner is ill and fighting The Agency's retaliation for his Unemployment Benefits in which The Petitioner prevailed in 2013. **Retrospect:** About the Petitioner appeal with EEOC'S Final Decision and the Petitioner's appeal in 2013 he acted with precaution; for 2 years he's been checking his mail for his 90 Days' Notice from EEOC to sue in Federal District Court. Keeping

¹³ A unanimous Supreme Court in *Robinson v. Shell Oil*, adopts EEOC's position (advanced as *amicus curiae*) that the Title VII prohibition against retaliation protects former as well as current employees.

in contact with his neighbor for mail because he used to live in Apartment 1722 BUT moved to Apartment 1726 in the same building; Because the Petitioner and his family mail usually still get sent to Apartment 1722, even though he updated his address.

See ECF 1 #5 Attachment 3 at 1-5 The Petitioner Address Change. In addition, The Petitioner had spoken to The EEOC Judge Modu on the phone in His 90 Days Limitation Period in 2015, to obtain The Meat Department Workers SF-50's and ROI Files which is about 280 something pages; without The EEOC Hearing Testimonies and The Judge's Affidavit. BUT Judge Modu told The Petitioner to contact The Agency. However, The Commissary Agency wouldn't release the documents, they said the case was closed, and that the Petitioner would have to get them from a Judge. In Between that time period, it was nothing much The Petitioner could do. The Petitioner continue in Due Diligence, he went to the Library when he could and searched online for ways to obtain the documents. The SF-50's from the workers in The Meat Department are needed to argue The Petitioner's Discrimination Claim in The Meat Department and to demonstrate that he wasn't paid like his former Co-workers in The Meat Department. The Agency have yet to release these SF-50 documents.

Reasons for Granting the Petition

The SF-50 are to show that other GS Employees were made Meat Cutters and Helpers as well; and they didn't complete their training in The WOF Training Program and that The Agency NEVER entered into evidence to show how Eric Serrano was more qualified than The Petitioner, for The Meat Department Position. On the Petitioner's Sick Bed: It was difficult for him to argue his case without the Main Files, that are a center part of his case. The Courts may contact Judge Modu in Baltimore Maryland to confirm, on that phone call during the Petitioner's 90 days period. Judge Modu told the Petitioner that she remembered him. The original request was made for The Petitioner to give UP that production of The Wage Grade Workers SF-50's, in The Meat Department; in 2011 before the EEOC Hearing. In 2013 The Judge Modu Ordered the Agency's Lawyer to re-send over the ROI files On a Conference Call with the Agency's Lawyer at the time Rachel Orejana, during her Final Judgement March 29, 2013; BUT Rachel Orejana abandon the case by not doing those last duties as the Agency's Lawyer. The Argument is The Petitioner needed these (ROI-Files) for his appeal from EEOC Final Decision. The Agency NEVER did send over the Files. (In the Petitioner's 90 Days Limitation Period in **(September 17, 2015 to December 21, 2015)**, he never had the Files. He was told that he had to request them during Discover before a trial in District Court). The Petitioner also Requested these documents from Jane Andersen in a brief phone conversation, The Agency didn't send the ROI Files **until approximately August Of 2016 without the Meat Department Workers SF-50's. Undisputed See ECF 16, ECF 17 AND ECF 18.** On YouTube.com Type In 13-15537 Fredys Martinez V. Jack Palmer: Here's a Judge reciting from a previous case Gibbs Vs... Extraordinary Circumstances Judge Reciting: If the Plaintiff's DOESN'T have his files in the 90 Days Limitation Period that creates **Extraordinary**

Circumstances. See also EFC 16 AMENDED COMPLAINT ¹⁴

In *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), the Court ruled that an employer may be liable for all acts contributing to a hostile work environment as long as one of the contributing acts occurred within the applicable 180/300-day filing period.

Reasons for Granting the Petition

During the Petitioner's 90 Days Limitation Period, The Petitioner searched to find The Agency's Lawyer to submit his complaint to. His last Agency played phone tag, transferring him to one person after another and saying that the last Lawyer who worked on his case was fired or no longer worked for The Agency. The Pentagon of The Respondent mislead The Petitioner. The Petitioner called The Department of Defense requesting information regarding Ashton B. Carter's Lawyer at the time. The Petitioner was told to contact The Commissary Headquarter. (The Petitioner told The Pentagon in Washington DC, that his case was going before a Federal District Judge). The Petitioner was told by the Commissary Head Quarters that he had to send his complaint to Sally Bacon, that she was the Lawyer for The Defense Commissary Agency and that she deals with all Discrimination Cases situated with The Agency.

The Petitioner sent his motion before The Court System in Greenbelt Maryland; In December of 2015 with courtesy and perseverance: The Petitioner spoke with the

¹⁴ The Ninth Circuit Court of Appeal withdrew an opinion it filed on February 25, 2015, replaced it with an amended opinion, and reversed the district court's summary judgment in favor of an employer, Sears, Roebuck and Co., in a former employee's disability discrimination lawsuit brought under California's Fair Employment and Housing Act ("FEHA"). See, *Nigro v. Sears Roebuck & Co.* (9th Cir. 12-57262 amended opn. 4/10/15)

District Court Clerk Office in Maryland, checking the status of his Complaint he sent in; the status remained active but with no further updates until about the middle of March 2016, During this time The Petitioner was ordered by The Court to send his Complaint to The Respondent Ashton B. Carter's Secretary of Defense. **On May 25, 2016** the Petitioner called The Court of Greenbelt Maryland because he hadn't heard about his case since the middle of March 2016.

On May 25, 2016 The U.S Marshall Office: Deputy Melissa said the forms addressed to the Respondent's Secretary of Defense Ashton Carter at 1300 E Avue Fort Lee VA 23801 were returned as unsuccessful delivery. **See ECF 1 #3 Attachment 1 Judge Affidavit The last address for the Agency's Lawyer was at the address mention above.**

On May 25, 2016 the Petitioner spoke with **United States Secretary of Defense Lawyer**, Sally Bacon approximately 11:50 AM. The Petitioner left her a phone message she returned the call within that hour. However, in this time speaking with The Respondent's Lawyer Sally Bacon, she stated clearly that The Pentagon had sent her The Petitioner's Complaint and that it was on her desk right in front of her. She said, she received it around **April 2016** AND she said it was dated **December 21, 2015**. (Undisputed by The Respondent.)

See ECF 8 Now, how is that The Respondent's Lawyer for former Secretary of Defense Ashton Carter received the Petitioner's Complaint? Sally Bacon said she had it since **April 2016**. The U.S. Marshal's said The Respondent Ashton Carter who name was on The Complaint, Returned It to The U.S. Marshall Office in **May of 2016**.

On June 6, 2016 The Petitioner wrote a letter to the then Judge Theodore D. Chuang TDC-15-3897 "/s/" about the situations that happen on **May 25, 2016**. Saying that, how is it that Sally Bacon receive The Petitioner's Complaint in **April 2016**, but it was returned as an unsuccessful deliver in **May of 2016**? In addition, The Petitioner requested the time period for The Agency's response to his

Complaint, from The Judge in that Letter as well. **On June 10, 2016** Judge Paula Xinis became the assigned Judge in this case **PX-15-3897** she intervened and made the correct Lawyers names known; Rod Rosenstein and U.S Attorney General Loretta Lynch. **On June 20, 2016** The Petitioner filed an Amended Complaint. **See ECF 16 On June 30, 2016.** The Petitioner filed with the U.S. Marshall's Office to renotify the Respondent the Secretary of The Department of Defense. Addressing the correct Lawyer Rod J. Rosenstein, Chief Contractor for The Defense Commissary Agency and U.S. Attorney General Loretta Lynch. **August Of 2016** The Respondent filed a Motion to dismiss The Amended Complaint, or in Alternative, for Summary Judgement, **See ECF 18. On October 23, 2016,** Petitioner filed a Motion seeking permission to file Amended Opposition Papers. **See ECF 21 Letter Order Granting ECF 19 Correspondence to the Honorable Paula Xinis from Plaintiff Lester D. Fletcher requesting notice of response deadline and additional time; DIRECTING Plaintiff to Respond to the Defendants' Motion no later than 10/23/2016; Government's reply id Due 17 Days thereafter. Signed by Judge Paula Xinis on 9/20/2016 (c/m pla 9/20/16 rs) (rss, Deputy Clerk) (Entered: 9/20/2016.)** On November 10, 2016 The Respondent notified The Courts that it had no objections to Petitioner's being permitted to file Amended Opposition Papers. **On November 23, 2016** The Petitioner was granted Protective Order for Discovery Materials and The Respondent's Lawyer Agency's Assistance Jane E. Andersen, had no objectives to The Petitioner's Amended Complaints: During a Conference Call with Judge Paula Xinis. **On December 5, 2016,** The Respondent Ashton Carter Lawyer was assigned to work with The Petitioner on the documentation he requested to be Confidential; The Exhibits were scanned for The Courts, Attachment 1 To ECF 22 at that time.

Reasons for Granting the Petition

Underscoring: Sally Bacon told The Petitioner she was looking at his Complaint when he called her in May 2016 and she returned his phone call from Phone 1-804-734-8000 at approximately 11:50 AM On May 25, 2016... (Looking at my cell phone calls right now). In addition, this is undisputed by The Respondent and his Lawyers, that Sally Bacon received The Complaint and had it all along for months. By law this is Equitable Estoppel: **The Respondent Secretary of Department of Defense Lawyer, Sally Bacon said she received the Petitioner's complaint 4/2016.** How did Sally Bacon know the file date if she didn't Open the Complaint that was sent back to The US Marshal's Office? **See ECF 1 #2 Proposed Summons (kw2s, Deputy Clerk) (Entered: 12/23/2015) See ECF 7 Summons issued 21 days as to Ashton Baldwin Carter. (kw2s, Deputy Clerk) (Entered: 03/25/2016) See ECF 8 #1 Mailed Returned as Undeliverable. Mail sent to Ashton Carter (Attachments: #1 1st Page of Returned Mail) (kw2s, Deputy Clerk) (Entered: 05/03/2016) See ECF 9 Summons Returned Unexecuted by Lester D. Fletcher as to Ashton Baldwin Carter. (kw2s, Deputy Clerk) (Entered: 05/03/2016).** The Petitioner assumes the answer is: Sally Bacon intentionally opened the Certified Mail took out The Petitioner's Complaint read it and made copies of it and sent it back. Because the Federal Judge had to step in on or about **June 8, 2016 See ECF 10 Case Reassigned to Judge Paula Xinis. Judge Theodore D. Chuang no longer assigned to the case. (aos, Deputy Clerk) (Entered: 06/08/2016)** to have Rod Rosenstein and Jane Anderson make themselves known to The Petitioner Mr. Lester Fletcher. See ECF 13 NOTICE of APPEARANCE by Jane Elizabeth Andersen on behalf of Ashton Baldwin Cater. **See also ECF 14 Correspondence re accepting service on behalf of Ashton Baldwin Carter, Defense Commissary Agency DeCA, Department of Defense (Andersen, Jane) (Entered: 06/15/2016.)** So, the new

Lawyers for the former Secretary of Defense Ashton B. Carter are Assistant Attorney General Rod Rosenstein and Jane Andersen At 36 S. Charles Street. Baltimore Maryland 21201 and to address Attorney General Loretta Lynch in Washington DC and Ashton Carter at 1400 Defense Pentagon.

(Letter from The Petitioner) for Unsuccessful Service of The Complaint by U.S. Marshal. The Petitioner tried his hardest to get the right information from The Pentagon and DeCA DOD, their Misconduct deceived him. Regardless if the Complaint AND Summons went to Sally Bacon (who perverted the course of JUSTICE), the Depart of Defense had the Complaint since **April 2016. (Criminal Code 1899-SECT 140 Attempting to pervert JUSTICE (1) A person who attempts to Obstruct, Prevent, Pervert, or defeat the course of JUSTICE is guilty of a CRIME.)** Why would the Judge Paula Xinis wait a year and a half to say the Petitioner was a day late filing? However, The Petitioner has shown Due Diligence in his process of filing his COMPLAINT in Court. **See ECF 11 at 1-4 Correspondence from the Plaintiff re: Status update (bus, Deputy Clerk) (Entered: 06/08/2016.)** The Petitioner's Undisputed complaint against Sally Bacon. See also EFC 16 AMENDED COMPLAINT, Filed by Lester D. Fletcher. (Attachments: #1 Amended US Marshal 285 Form, #2 Proposed Summons) (rss, Deputy Clerk) (Entered: 07/01/2016.)

1 United States Court of Appeals, Seventh Circuit. Simeon GABEROV, Petitioner, v. Michael B. MUKASEY, Attorney General of the United States, Respondent No. 07 1417. Decided: February 19, 2008 Granted This Case with Due Diligence: These facts warrant equitable tolling despite 4 years wait, so Gaberov's motion to reopen should have been granted. The BIA has authority to reissue a decision if notice miscarries, *Firmanajah v. Ashcroft*, 347 F.3d 625 (7th Cir. 2003), which would allow Gaberov to pursue a status adjustment.

18 U.S. Code § 242 - Deprivation of rights under color of law Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully on in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties,...

The Petitioner have discovered Age AND Disability Discrimination Facts AND Retaliation in The EEOC Judge's Affidavit, The Petitioner will like The Supreme Court to give him time to argue these New Discoveries in The Lower Court.

62:11-cv-00183-JAW MARY ANN BENSON, et al., v. UNIVERSITY OF MAINE) SYSTEM, Also, without objection from the Plaintiffs, the Court GRANTS the University of Maine System's Motion to Dismiss, but only as to Count III of the Plaintiffs' Second Amended Complaint; the Court otherwise DENIES the Defendants' Motion to Dismiss the Plaintiffs' Second Amended Complaint (Docket # 16). Also Note: See ECF No. 18 At 6. The Federal Judge in The Petitioner's District

The Petitioner raised the argument again about his Disability Claim Inter Alia thoroughly with his Amended Complaint, that was approved by Judge Paula Xinis Md. Courts & Jud. Proc. Code Ann. 8 5-101 et seq 3 Years Statue. Reason:

The Petitioner seek to claim these charges in an amendment with his other claims in District Court; Disability, Age Discrimination and being Wrongly Terminated. See Agency's Exhibit 2 Pages 269-271 AND 317-318 & 324):

So, In the Federal Judge Paula Xinis Decision on March 6, 2017, She Stated that The Petitioner's case was Closed because he was found a day late over his 90 Days Limitation Period and lack of Jurisdiction. **SEE ECF 36 and ECF 37.** However, she added The Petitioner never gave a reason for Tolling. That's because The Petitioner never knew he was tolling, none to the less that he was found late filing his Complaint over a year and a half later of Due Diligent processing. Tolling didn't come about until the Judge Gave Her Final Order on March 6, 2017. **Since, See ECF 39** wasn't accepted by Judge Paula Xinis by Returning the Petitioner's Plead Letter on **March 24, 2017. See, ECF 49** should be overturned because Judge Paula Xinis used the same decision on that documentation, she sent back to the Petitioner and said the case was closed and that she couldn't accept his Plead Letter on **March 24, 2017.** The Petitioner's Plead Letter was returned stating the case was closed, so again how can Judge Paula Xinis use documentation she rejected in conjunction with **SEE ECF 49, MOTION 47 NOT to reconsider opening the Petitioner case back up? That Said Jurisdiction shall be granted for the Petitioner to continue his case in the lower courts.**¹⁵

¹⁵ The Fourteenth Amendment provides, in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *4 MENOMINEE INDIAN TRIBE OF WISCONSIN, Appellant v. UNITED STATES of America, et al., Appellees. Writ of Certiorari GRANTED:* Because no extraordinary circumstances stood in the Tribe's way, we need not pass on whether, under Holland's first prong, the Tribe pursued its rights diligently.

If I may please The Court, Below.

Reasons for Granting the Petition

Justice: The Petitioner is seeking Equitable Tolling on the grounds of his Due Diligence for processing his paper work throughout this entire time. Extraordinary Circumstances because he didn't have his ROI files in His 90 Day Limitation period, his Disability Claims discovery connected to his reassignments, his Family Leave disability denial and his three years Maryland Tort Claim filing period had not expired, that the complainant discovered in His Appealed to EEOC June 6, 2013 with his Age Discrimination being discovered in his 90 Days Limitation Period AND the Petitioner questions "The Agency's Misconduct" on May 25, 2016, having the Petitioner's Complaint being sent in March BUT keeping copies of the complaint since April 2016 and returning the Summons in March, 2016. The Petitioner appeals the dismissal of his claim through The Supreme Court. The Respondent should be Estopped from relying on The Statute of Limitations of The Petitioner's 90 Days Expiring. It is The Petitioner's Job to explain to The Supreme Court for the reason his Petition shall be GRANTED NOT to overthrow the previous Judge finding Of Discrimination. The Supreme Court shall grant the District Court a Chance to hear my Case thoroughly, I've been working on as a Pro Se for the last few years, constantly. Lastly, The Supreme Court can follow that suit as the other Judges in their review. This Case Is Genuine AND can help others with Disability Amendments and HIPPA Rights. This is my Prayer of Relief in Jesus Christ NAME. The Petitioner ask that his Disability Claim be accepted by The Supreme Court to The District Court, and to accept his (Amended Complaint) he entered argument on June 30, 2016 See ECF 16 AND ECF Under Title VII of The Civil Rights Act Of 1964 See ECF No. 16. 42 U.S.C. 2000 et seq (ECF No. 16 At 1) The Americans With Disability Act Of 1990 (ADA). 42 U.S.C.A. 12101 et seq (ECF No. 16 At 1) The Rehabilitation Act of 1973.29 U.S.C. A 701-797 (ECF No. 16 At 1); The Age Discrimination in Employment Act 9 ADEA).29 U.S.C. 621 et seq. (ECF No.16 At 40.

LET THE STATEMENT OF THE CASE SHOW ¹⁶This case implicates the same unanimous circuit ruling —on which this Supreme Court granted certiorari in *EEOC vs United Airlines*. The Supreme Court AFFIRMED with the 7th Circuit's decision, right of employees to seek reassignment to vacant positions as a form of reasonable accommodation for their disabilities when accommodation in the original position is not possible. The Court expressed approval of lower court decisions holding that "a plaintiff/employee (to defeat a defendant/employer's motion for summary judgement) need only show that an 'accommodation' seems reasonable on its face, i.e., ordinarily or in the run of cases" and that "once the plaintiff has made this showing, the defendant/employer then must show special (typically case-specific) circumstances that demonstrate undue hardship. Again, the Petitioner initial charge including reasonable accommodation before EEO AND EEOC cannot be taking into consideration without his Disability Letters from his Doctors. The Statement of Case is an imperative CRITICAL REVIEW, brought to your attention, the Disability Letters for "Reasonable Accommodation" may have never made light. The Petitioner was a Store Associate, could have been accommodated in more than four other departments without causing hardship to the Agency.

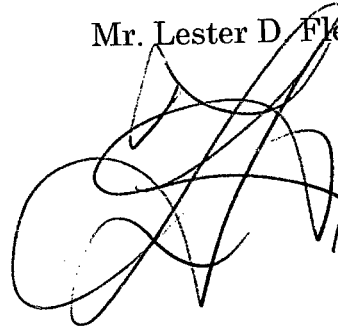
¹⁶ ¹⁶ News from the Supreme Court: As part of a set of orders, the Supreme Court on May 28, 2013, issued an order denying United Airlines' request for the Supreme Court to hear its appeal of the September 7, 2012, decision of the U.S. Court of Appeals for the 7th Circuit in *EEOC v. United Airlines*, Case No. 11-1774. The Supreme Court's order lets stand the 7th Circuit's decision affirming the right of employees to seek reassignment to vacant positions as a form of reasonable accommodation for their disabilities when accommodation in the original position is not possible. Source www.passmanandkaplan.com/blog/2013/06/news-from-the-supreme-court-review-denied-in-reasonable-accommodation-case.shtml

In Conclusion

**The Petition for A Writ of Certiorari Should Be Granted in The Petitioner's
favour, because the Petitioner doesn't just want to be heard, he is due
Justice, process.**

Respectfully Submitted By

Mr. Lester D Fletcher

A handwritten signature in black ink, appearing to be 'Lester D Fletcher', written over the printed name.